

## REMARKS

In the Office Action dated October 20, 2004, the Examiner rejected claims 14-18, 20-23, 26, and 73-75 under 35 U.S.C. § 103(a) as being unpatentable over *Mason et al.* (U.S. Patent No. 6,401,075) in view of *Himmel et al.* (U.S. Patent No. 6,317,782) and rejected claims 40-84 under 35 U.S.C. § 103(a) as being unpatentable over *Himmel et al.* in view of *Mason et al.*<sup>1</sup>

By this Amendment, Applicants propose to cancel claims 14-18, 20-23, 26, 47, 58, 69, and 73-75 without prejudice or disclaimer and amend claims 40, 51, and 62. Claims 1-13, 19, 24, 25, and 27-39 were previously canceled without prejudice or disclaimer. As such, with entry of this amendment, claims 40-46, 48-57, 59-68, 70-72, and 76-84 are pending in this application. Moreover, the recitations added to claims 40, 51, and 62 correspond to the recitations of respective dependent claims 47, 58, and 69. Support for these amendments are also found, for example, in Applicants' specification on page 28, line 4 to page 29, line 5 and page 30, line 24 to page line 10. Based on the following remarks, Applicants respectfully traverse the rejection of claims 14-18, 20-23, 26, and 40-84 under U.S.C. § 103(a) insofar as the Examiner deems it applicable to the amended claims.

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<sup>1</sup> The Examiner does not address claims 73-75 in this rejection under 35 U.S.C. § 103(a). Because these claims are addressed in the rejection of claims 14-18, 20-23, 26, and 73-75 under 35 U.S.C. § 103(a) in view of *Mason et al.* and *Himmel et al.*, it appears the Examiner inadvertently included claims 73-75 in the rejection of claims 40-84. As such, Applicants will not address claims 73-75 in the response to the rejection of claims 40-84.

I. The Rejections of Claims 14-18, 20-23, 26, and 73-75 under 35 U.S.C. § 103(a)

Applicants propose to cancel claims 14-18, 20-23, 26, and 73-75. As such, the rejections of these claims under 35 U.S.C. § 103(a) are moot and should be withdrawn.

II. The Rejections of Claims 40-84 under 35 U.S.C. § 103(a)

Applicants propose to amend claim 40 to include the recitations of dependent claim 47. As such, because no new matter is introduced by this amendment, Applicants request the proper consideration of amended claim 40 as there are no new issues raised that require additional consideration and/or search.

Claim 40 recites a method for performing dynamic Web-based in-view monitoring. As recited in the claim, the method appends a client side routine to a Web page provided by a Web server. In response to the Web page being displayed to a user, the respective client node of the user initiates the client side routine to perform: detecting in-view user activities associated with in-view response data reflecting whether or not the content data was viewable or partially viewable to each respective user; collecting data reflecting the in-view user activities, where the collected data includes information indicating the proportion of content actually viewable to a respective user; detecting a client side trigger event; and sending the collected data to the Web server in response to the detected client side trigger event. The method analyzes the collected data to determine user in-view characteristic data

reflecting whether the content was viewable or partially viewable by each respective user.

In contrast, *Himmel et al.* discloses a system that tracks the amount of time an advertisement is actually viewable on a Web page. (*Himmel et al.*, col. 3, lines 56-63 and col. 9 line 60 to col. 10, line 5.) While *Himmel et al.* describes a system that determines whether a displayed advertisement is actually viewable, the reference does not disclose, or even suggest collecting data reflecting in-view user activities, where the collected data includes information indicating the proportion of content actually viewable to a respective user, as recited in claim 40.

*Mason et al.* does not make up for the above noted deficiencies of *Himmel et al.* *Mason et al.* discloses a system allowing a Web page server to monitor the number of “hits” or “click-throughs” associated with an advertisement link displayed at a URL. (Col. 4, lines 20-37.) For instance, a “hit” of the advertisement link occurs when a user simply causes the URL to be displayed. (Col. 4, lines 20-28.) A “click-through” occurs when a user actually clicks on the advertisement to cause the advertiser’s website to then be displayed. (Col. 4, lines 29-37.) From the monitored number of hits or click-throughs, the *Mason et al.* system can determine the success of a particular advertisement.

Accordingly, neither *Mason et al.* or *Himmel et al.*, alone or in combination, teach or suggest at least collecting data reflecting in-view user activities, where the collected data includes information indicating the proportion of content actually viewable to a respective user, as recited in claim 40. As admitted by the Examiner, *Mason et al.* has no disclosure relating to “in-view characteristic data” that “reflects

whether the content was viewable or partially viewable.” (Final Office Action, page 3, lines 4-6.) Further, as argued above, *Himmel et al.* merely monitors time periods when advertisements are viewable and does not suggest proportion information related to content actually viewable by a user.

With regard to the recitations of canceled claim 47, which are incorporated into independent claim 40, the Examiner asserts that the cited references teach collecting data reflecting the in-view user activities “includes information indicating the proportion of content actually viewable to a respective user (see column 10, lines 11-14).” (Final Office Action, page 8, ¶ 25.) Applicants disagree with the Examiner’s interpretation of *Himmel et al.* The cited teaching of *Himmel et al.* states, “[i]f the connection is still present, then the visible time, and any other additional information required, for which the Advertisement A 604 was present is sent to the responsible server 188 (Step 826).” (*Himmel et al.*, col. 10, lines 11-14.) Neither this teaching, nor any other teaching, of *Himmel et al.* discloses or suggests a proportion of content that was actually viewable to a user. Instead, *Himmel et al.* merely discusses the transmission of time tracking data to a server. This does not teach or even relate to data that includes information indicating the proportion of content actually viewable to a respective user, as recited in claim 40.

Accordingly, *Mason et al.* and *Himmel et al.*, alone or in combination, fail to describe or suggest in-view characteristic data reflecting whether content was viewable or partially viewable and collecting data reflecting the in-view user activities that includes information indicating the proportion of content viewable to a respective user, as recited in claim 40. For at least these reasons, Applicants respectfully

request that the Examiner withdraw the rejection of claim 40 under 35 U.S.C. § 103(a) and allow the claim.

Claims 41-46, 48-50, and 76-78 depend from claim 40. As explained, claim 40 is distinguishable from *Mason et al.* and *Himmel et al.* Accordingly, claims 41-46, 48-50, and 76-78 are also distinguishable from these references for at least the same reasons set forth above in connection with claim 40. Therefore, Applicants respectfully request that the Examiner withdraw the rejection of these claims under 35 U.S.C. § 103(a) and allow the claims.

Applicants also propose to amend claims 51 and 62 to include the recitations of dependent claims 58 and 69, respectively. As such, because no new matter is introduced by these amendments, Applicants request the proper consideration of amended claims 51 and 62 as there are no new issues raised that require additional consideration and/or search.

Claims 51 and 62 includes recitations similar to those of claim 40. As explained, claim 40 is distinguishable from *Mason et al.* and *Himmel et al.* Accordingly, claims 51 and 62 are also distinguishable from these references for at least the same reasons set forth above in connection with claim 40. Therefore, Applicants respectfully request that the Examiner withdraw the rejection of claims 51 and 62 under 35 U.S.C. § 103(a) and allow the claims.

Claims 52-57, 59-61, and 79-81 depend from claim 51 and claims 63-68, 70-72, and 82-84 depend from claim 62. As explained, claims 51 and 62 are distinguishable from *Mason et al.* and *Himmel et al.* Accordingly, claims 52-57, 59-68, 69-72, and 79-84 are also distinguishable from these references for at least the

same reasons set forth above in connection with claims 51 and 62. Therefore, Applicants respectfully request that the Examiner withdraw the rejection of these claims under 35 U.S.C. § 103(a) and allow the claims.

### III. Conclusion

Applicants respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 40-46, 48-57, 59-68, 70-72, and 76-84 in condition for allowance. Applicants submit that the proposed amendments of the claims do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Indeed, the amendments to claims 40, 51, and 62 include recitations previously considered by the Examiner (i.e., dependent claims 47, 58, and 69, respectively). Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicants respectfully point out that the final action by the Examiner presented some new arguments as to the application of the art against Applicant's invention. It is respectfully submitted that the entering of the Amendment would allow the Applicants to reply to the final rejections and place the application in condition for allowance.

Finally, Applicants submit that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: December 22, 2004

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Joseph E. Palys", written over a horizontal line.

Joseph E. Palys  
Reg. No. 46,508